



**Billing Code: 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 131108946-5860-01]**

**RIN 0648-BD76**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;  
Dolphin and Wahoo Fishery Off the Atlantic States and Snapper-  
Grouper Fishery of the South Atlantic Region; Amendments 7/33**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Amendment 7 to the Fishery Management Plan (FMP) for the Dolphin and Wahoo Fishery off the Atlantic States (Dolphin and Wahoo FMP) and Amendment 33 to the FMP for the Snapper-Grouper Fishery of the South Atlantic Region (Snapper-Grouper FMP) (Amendments 7/33), as prepared and submitted by the South Atlantic Fishery Management Council (Council). If implemented, this rule would revise the landing fish intact provisions for vessels that lawfully harvest dolphin, wahoo, or snapper-grouper in or from

Bahamian waters and return to the U.S exclusive economic zone (EEZ). The U.S. EEZ as described in this proposed rule refers to the Atlantic EEZ for dolphin and wahoo and the South Atlantic EEZ for snapper-grouper species. The purpose of this proposed rule is to improve the consistency and enforceability of Federal regulations with regards to landing fish intact provisions for vessels transiting from Bahamian waters through the U.S. EEZ and to increase the social and economic benefits related to the recreational harvest of these species, in accordance with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Written comments must be received on or before *[insert date 30 days after date of publication in the **FEDERAL REGISTER**]*.

**ADDRESSES:** You may submit comments on the proposed rule, identified by "NOAA-NMFS-2015-0047" by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *[www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0047](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0047)*, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to Nikhil Mehta, Southeast Regional Office, NMFS, 263 13th Avenue South, St.

Petersburg, FL 33701.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of Amendments 7/33, which includes an environmental assessment, regulatory impact review, and Regulatory Flexibility Act analysis, may be obtained from the Southeast Regional Office Web site at [http://sero.nmfs.noaa.gov/sustainable\\_fisheries/s\\_atl/generic/2015/dw7\\_sg33/index.html](http://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/generic/2015/dw7_sg33/index.html).

**FOR FURTHER INFORMATION CONTACT:** Nikhil Mehta, telephone: 727-824-5305, or e-mail: *nikhil.mehta@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The dolphin and wahoo fishery is managed under the Dolphin and Wahoo FMP and the snapper-grouper fishery is managed under the Snapper-Grouper FMP. The FMPs were prepared by the Council and are implemented through regulations

at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

## **Background**

Current Federal regulations require that dolphin or wahoo or snapper-grouper species onboard a vessel traveling through the U.S. EEZ must be maintained with the heads and fins intact and not be in fillet form. However, as implemented through Amendment 8 to the Snapper-Grouper FMP, an exception applies to snapper-grouper species that are lawfully harvested in Bahamian waters and are onboard a vessel returning to the U.S. through the U.S. EEZ (63 FR 38298, July 16, 1998). Amendment 8 to the Snapper-Grouper FMP allows that in the South Atlantic EEZ, snapper-grouper lawfully harvested in Bahamian waters are exempt from the requirement that they be maintained with head and fins intact, provided valid Bahamian fishing and cruising permits are on board the vessel and the vessel is in transit through the South Atlantic EEZ. A vessel is in transit through the South Atlantic EEZ when it is on a direct and continuous course through the South Atlantic EEZ and no one aboard the vessel fishes in the South Atlantic EEZ.

The Bahamas does not allow for the commercial harvest of dolphin, wahoo, or snapper-grouper by U.S. vessels in Bahamian waters. Therefore, the measures proposed in this rule only apply

to the recreational harvest of these species by vessels returning from The Bahamas to the U.S. EEZ. This proposed rule would not change potential liability under the Lacey Act, which makes it unlawful to import, export, sell, receive, acquire, or purchase fish that are taken, possessed, transported or sold in violation of any foreign law.

### **Management Measures Contained in this Proposed Rule**

This proposed rule would revise the landing fish intact provisions for vessels that lawfully harvest dolphin, wahoo, or snapper-grouper in Bahamian waters and return to the U.S. EEZ. The proposed rule would allow for dolphin and wahoo fillets to enter the U.S. EEZ after lawful harvest in The Bahamas; specify the condition of any dolphin, wahoo, and snapper-grouper fillets; describe how the recreational bag limit would be determined for any fillets; explicitly prohibit the sale or purchase of any dolphin, wahoo, or snapper-grouper recreationally harvested in The Bahamas; specify the required documentation to be onboard any vessels that have these fillets, and specify transit and stowage provisions for any vessels with fillets.

#### *Landing Fish Intact*

Currently, all dolphin or wahoo on vessels within the Atlantic EEZ are required to be maintained with head and fins

intact. These fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition. This proposed rule would allow for dolphin or wahoo lawfully harvested in Bahamian waters to be exempt from this provision when returning through the Atlantic EEZ. Dolphin or wahoo harvested in or from Bahamian waters would be able to be stored on ice more effectively in fillet form for transit through the U.S. EEZ, given the coolers generally used on recreational vessels. Allowing these vessels to be exempt from the landing fish intact regulations would increase the social and economic benefits for recreational fishers returning to the U.S. EEZ from Bahamian waters. This proposed rule would also allow for increased consistency between the dolphin and wahoo and snapper-grouper regulations for vessels transiting from Bahamian waters. This proposed measure would not be expected to substantially increase recreational fishing pressure or otherwise change recreational fishing behavior, because any fish harvested in Bahamian waters and brought back through the U.S. EEZ would not be exempt from U.S. bag limits, fishing seasons, size limits, or other management measures in place in the U.S. EEZ, including prohibited species (e.g., goliath grouper and Nassau grouper). Therefore, there are likely to be neither positive nor negative additional biological effects to these species.

Snapper-grouper possessed in the South Atlantic EEZ are currently exempt from the landing fish intact requirement under certain conditions if the vessel lawfully harvested the snapper-grouper in The Bahamas. Amendments 7/33 and this proposed rule would retain this exemption and revise it to include additional requirements.

The Council and NMFS note that this exemption only applies to the landing fish intact provisions for fish in the U.S. EEZ, and does not exempt fishers from any other Federal fishing regulations such as fishing seasons, recreational bag limits, and size limits.

#### *Condition of Fillets*

Amendment 8 to the Snapper-Grouper FMP allowed a vessel with snapper-grouper fillets to be in transit in the South Atlantic EEZ after lawful harvest in Bahamian waters; however, no fillet requirements were specified (63 FR 38298, July 16, 1998). To better allow for identification of the species of any fillets in the U.S. EEZ, this proposed rule would require that the skin be left intact on the entire fillet of any dolphin, wahoo, or snapper-grouper carcass on a vessel in transit from Bahamian waters through the U.S. EEZ. This requirement is intended to assist law enforcement in identifying fillets to determine whether they are the species lawfully exempted by this

proposed rule.

#### *Recreational Bag Limits*

Currently, all dolphin, wahoo, and snapper-grouper species harvested or possessed in or from the U.S. EEZ are required to adhere to the U.S. bag and possession limits. This proposed rule would not revise the bag and possession limits, but would specify how fillets are counted with respect to determining the number of fish onboard a vessel in transit from Bahamian waters through the U.S. EEZ and ensuring compliance with U.S. bag and possession limits. This proposed rule would specify that for any dolphin, wahoo, or snapper-grouper species lawfully harvested in Bahamian waters and onboard a vessel in the U.S. EEZ in fillet form, two fillets of the respective species of fish, regardless of the length of each fillet, is equivalent to one fish. This measure will assist law enforcement in enforcing the relevant U.S. bag and possession limits. This measure would not revise the bag and possession limits in the U.S. EEZ for any of the species in this proposed rule. All recreational fishers in Federal waters would continue to be required to comply with the U.S. bag and possession limits, regardless of where any fish were harvested.

#### *Sale and Purchase Restrictions of Recreationally Harvested Dolphin, Wahoo or Snapper-Grouper*



This proposed rule would explicitly prohibit the sale or purchase of any dolphin, wahoo, or snapper-grouper species recreationally harvested in Bahamian waters and returned to the U.S. through the U.S. EEZ. The Council determined that establishing a specific prohibition on the sale or purchase of any of these species from The Bahamas was necessary to ensure consistency with the current Federal regulations that prohibit recreational bag limit sales of these species. The Council wanted to ensure that Amendments 7/33 and the accompanying rulemaking did not create an opportunity for these fish to be sold or purchased.

#### *Required Documentation*

This proposed rule would revise the documentation requirements for snapper-grouper species and implement documentation requirements for dolphin and wahoo harvested in Bahamian waters and onboard a vessel in transit through the U.S. EEZ. For snapper-grouper lawfully harvested under the existing exemption, the current requirement is that valid Bahamian fishing and cruising permits are on the vessel. This proposed rule would continue to require that valid Bahamian fishing and cruising permits are onboard and additionally require that all vessel passengers have valid government passports with current stamps and dates. These documentation requirements would apply

when dolphin, wahoo, or snapper-grouper is onboard a vessel in transit through the U.S. EEZ from Bahamian waters. Requiring valid Bahamian fishing and cruising permits on the vessel and requiring each vessel passenger to have a valid government passport with current stamps and dates from The Bahamas increases the likelihood that the vessel and passengers were lawfully fishing in The Bahamas, and thereby increases the likelihood that any dolphin, wahoo, or snapper-grouper fillets on the vessel were lawfully harvested in Bahamian waters and not in the U.S. EEZ.

#### *Transit and Stowage Provisions*

Vessels operating under the current snapper-grouper exemption have specific transit requirements when in the South Atlantic EEZ. These vessels are required to be in transit when they enter the South Atlantic EEZ with Bahamian snapper-grouper onboard. As described at § 622.186 (b), a vessel is in transit through the South Atlantic EEZ when it is on "a direct and continuous course through the South Atlantic EEZ and no one aboard the vessel fishes in the EEZ." This proposed rule would revise the snapper-grouper transit provisions, also apply the transit provisions to vessels operating under the proposed exemption for dolphin and wahoo, and require fishing gear to be appropriately stowed on a vessel transiting through the U.S. EEZ

with fillets of these species. The proposed definition for "fishing gear appropriately stowed" would mean that "terminal gear (*i.e.*, hook, leader, sinker, flasher, or bait) used with an automatic reel, bandit gear, buoy gear, handline, or rod and reel must be disconnected and stowed separately from such fishing gear. Sinkers must be disconnected from the down rigger and stowed separately." The Council determined that specifying criteria for transit and fishing gear stowage for vessels returning from The Bahamas under the exemption would assist in the enforceability of the proposed regulations and increase consistency with the state of Florida's gear stowage regulations.

#### **Classification**

Pursuant to section 304(b) (1) (A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with Amendments 7/33, the FMPs, the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if

implemented, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The purpose of this proposed rule is to adjust the possession requirements in the U.S. EEZ for dolphin, wahoo, and snapper-grouper species legally harvested in Bahamian waters in order to increase for U.S. fishermen the social and economic benefits related to the harvest of these species. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

NMFS expects that this proposed rule, if implemented, would directly apply to any angler traveling by fishing vessel, and to any operator or owner of a fishing vessel capable of traveling, to The Bahamas to engage in saltwater recreational fishing in Bahamian waters and returning with dolphin or wahoo or snapper grouper species to U.S. waters. This proposed rule would revise the possession requirements for certain saltwater species lawfully harvested in Bahamian waters. Some, but not all, of these vessels may be classified as small entities. The recreational anglers who will be affected by the proposed regulations are not small entities under the Regulatory Flexibility Act (RFA). Similarly, the owner or operator of a for-hire vessel would not be a small entity under the RFA when that vessel is being used for non-commercial purposes. However,

the proposed documentation, transit, and gear storage requirements would apply if the vessel is being operated as a for-hire vessel; the owner or operator may then qualify as a small entity.

For-hire vessels, which may be classified as either charter vessels or headboats, are used for the sale of fishing services which include the harvest of dolphin, wahoo, and snapper-grouper species, among other species to recreational anglers. These vessels provide a platform for the opportunity to fish and not a guarantee to catch or harvest any species, though expectations of successful fishing, however defined, likely factor into the decision to purchase these services. Changing the possession requirements of fish lawfully harvested in The Bahamas would only define what may be kept (in identity and condition) and not explicitly limit the offer of, or opportunity to acquire, for-hire fishing services. In response to a change in possession requirements, catch and release fishing for a target species could continue unchanged, as could fishing for other species. Because the proposed changes in the possession requirements for these species would not directly alter the service provided by the for-hire businesses, this proposed rule would not directly apply to or regulate their operations. The for-hire businesses would continue to be able to offer their core product, which is

an attempt to "put anglers on fish," provide the opportunity for anglers to catch those fish their skills enable them to catch, and keep those fish that they desire to keep and are legal to keep. Any change in demand for these fishing services, and associated economic affects, as a result of changing these possession requirements would be a consequence of behavioral change by anglers, secondary to any direct effect on anglers and, therefore, an indirect effect of the proposed rule. Because any effects on the owners or operators of for-hire vessels as a result of changing possession requirements would be indirect, they fall outside the scope of the RFA.

The owners or operators of for-hire vessels would be directly affected by the proposed documentation, transit, and gear storage requirements. The number of vessels that may be used for the offer for-hire services and would be directly affected by the proposed requirements, however, cannot be meaningfully determined with available data. One could assume that the vessels most likely to travel to The Bahamas are vessels that are currently operated as for-hire fishing vessels in the U.S. EEZ. In 2014, at least 1,430 vessels held one or more Federal permits to be operated as for-hire vessels (separate Federal permits are required to harvest different species) in the U.S. EEZ. Additionally, federally permitted

commercial vessels, of which over 1,900 had one or more Federal commercial permits in 2014, may also be capable of traveling to The Bahamas and being operated as for-hire vessels. Having a Federal permit would not be a factor in determining eligible vessels, however, and neither of these totals includes vessels that do not have a Federal permit and are operated only in U.S. state waters. In practice, although only a portion of these vessels would be expected to travel to The Bahamas and operate as a for-hire fishing vessel, no data are available on the number of vessels that currently engage in this practice to support estimating, within this universe of permitted and unpermitted vessels, the number of vessels which might be directly affected by this proposed rule.

NMFS has not identified any other small entities that would be expected to be directly affected by this proposed rule.

The Small Business Administration has established size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in the for-hire fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$7.5 million (NAICS code 487210, for-hire businesses) for all its affiliated operations worldwide.

The average charter vessel is estimated to receive approximately \$115,000 (2013 dollars) in annual revenue and the average headboat is estimated to receive approximately \$204,000 (2013 dollars) in annual revenue. As a result, all for-hire businesses that might be directly affected by this proposed rule are believed to be small business entities.

Three components of this proposed rule, the proposed documentation, transit, and gear storage requirements, would be expected to directly affect some small entities, but none would be expected to result in a significant adverse economic effect on any of the affected entities. The proposed documentation requirements (permits and passport) are already required for travel to, fishing in, and returning from Bahamian waters and, thus, would not impose any additional costs. The proposed transit requirement would not be expected to have any adverse economic effect because the vessel must return to the U.S. anyway and a direct and continuous transit would be the most economically efficient means of returning (indirect and discontinuous sailing would encompass more time and higher fuel expenses). The proposed gear storage requirement would be expected to either encompass normal gear storage behavior when traveling long distances while not actively fishing, or require a minor increase in labor, that should be able to be completed



during the vessel's return prior to entering the U.S. EEZ, and not an increase in monetary operating costs. As a result, this proposed requirement would not be expected to reduce vessel profits. Otherwise, the proposed changes may increase demand for for-hire fishing services and result in a beneficial economic effect on the affected small entities. As discussed above, however, these would be indirect effects and, therefore, outside the scope of the RFA.

Based on the discussion above, NMFS has determined that this proposed rule, if implemented, would not have a significant adverse economic effect on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

**List of Subjects in 50 CFR Part 622**

Atlantic, Dolphin, Fisheries, Fishing, Snapper-Grouper, Wahoo.

Dated: September 29, 2015

---

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC**

1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 622.186, paragraph (b) is revised to read as follows:

**§ 622.186 Landing fish intact.**

\* \* \* \* \*

(b) In the South Atlantic EEZ, snapper-grouper lawfully harvested in Bahamian waters are exempt from the requirement that they be maintained with head and fins intact, provided that the skin remains intact on the entire fillet of any snapper-grouper carcasses, valid Bahamian fishing and cruising permits are on board the vessel, each person on the vessel has a valid government passport with current stamps and dates from The Bahamas, and the vessel is in transit through the South Atlantic EEZ with fishing gear appropriately stowed. For the purpose of this paragraph, a vessel is in transit through the South

Atlantic EEZ when it is on a direct and continuous course through the South Atlantic EEZ and no one aboard the vessel fishes in the EEZ. For the purpose of this paragraph, fishing gear appropriately stowed means that terminal gear (*i.e.*, hook, leader, sinker, flasher, or bait) used with an automatic reel, bandit gear, buoy gear, handline, or rod and reel must be disconnected and stowed separately from such fishing gear. Sinkers must be disconnected from the down rigger and stowed separately. See § 622.187(a)(3) for the limit of snapper-grouper fillets lawfully harvested from Bahamian waters that may transit through the South Atlantic EEZ.

3. In § 622.187, paragraph (a)(3) is added to read as follows:

**§ 622.187 Bag and possession limits.**

(a) \* \* \*

(3) In the South Atlantic EEZ, a vessel that lawfully harvests snapper-grouper in Bahamian waters, as per § 622.186 (b), must comply with the bag and possession limits specified in this section. For determining how many snapper-grouper are on board a vessel in fillet form when harvested lawfully in Bahamian waters, two fillets of snapper-grouper, regardless of the length of each fillet, is equivalent to one snapper-grouper. The skin must remain intact on the entire fillet of any snapper-

grouper carcass.

\* \* \* \* \*

4. In § 622.192, paragraph (k) is added to read as follows:

**§ 622.192 Restrictions on sale/purchase.**

\* \* \* \* \*

(k) Snapper-grouper possessed pursuant to the bag and possession limits specified in § 622.187(a)(3) may not be sold or purchased.

5. In § 622.276, paragraphs (a) and (b) are revised to read as follows:

**§ 622.276 Landing fish intact.**

(a) Dolphin or wahoo in or from the Atlantic EEZ must be maintained with head and fins intact, except as specified in paragraph (b) of this section. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition. The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on that vessel in the EEZ are maintained intact and, if taken from the EEZ, are maintained intact through offloading ashore, as specified in this section.

(b) In the Atlantic EEZ, dolphin or wahoo lawfully harvested in Bahamian waters are exempt from the requirement that they be maintained with head and fins intact, provided that the skin remains intact on the entire fillet of any dolphin or

wahoo carcasses, valid Bahamian fishing and cruising permits are on board the vessel, each person on the vessel has a valid government passport with current stamps and dates from The Bahamas, and the vessel is in transit through the Atlantic EEZ with fishing gear appropriately stowed. For the purpose of this paragraph, a vessel is in transit through the Atlantic EEZ when it is on a direct and continuous course through the Atlantic EEZ and no one aboard the vessel fishes in the EEZ. For the purpose of this paragraph, fishing gear appropriately stowed means that terminal gear (*i.e.*, hook, leader, sinker, flasher, or bait) used with an automatic reel, bandit gear, buoy gear, handline, or rod and reel must be disconnected and stowed separately from such fishing gear. Sinkers must be disconnected from the down rigger and stowed separately.

6. In § 622.277, paragraphs (a)(1) and (a)(2) are revised to read as follows:

**§ 622.277 Bag and possession limits.**

\* \* \* \* \*

(a) \* \* \*

(1) *Dolphin*. (i) In the Atlantic EEZ--10, not to exceed 60 per vessel, whichever is less, except on board a headboat, 10 per paying passenger.

(ii) In the Atlantic EEZ and lawfully harvested in Bahamian

waters (as per § 622.276(b))--10, not to exceed 60 per vessel, whichever is less, except on board a headboat, 10 per paying passenger. For the purposes of this paragraph, for determining how many dolphin are on board a vessel in fillet form when harvested lawfully in Bahamian waters, two fillets of dolphin, regardless of the length of each fillet, is equivalent to one dolphin. The skin must remain intact on the entire fillet of any dolphin carcass.

(2) *Wahoo*. (i) In the Atlantic EEZ--2.

(ii) In the Atlantic EEZ and lawfully harvested in Bahamian waters (as per § 622.276(b))--2. For the purposes of this paragraph, for determining how many wahoo are on board a vessel in fillet form when harvested lawfully in Bahamian waters, two fillets of wahoo, regardless of the length of each fillet, is equivalent to one wahoo. The skin must remain intact on the entire fillet of any wahoo carcass.

\* \* \* \* \*

7. In § 622.279, paragraph (d) is added to read as follows:

**§ 622.279 Restrictions on sale/purchase.**

\* \* \* \* \*

(d) Dolphin or wahoo possessed pursuant to the bag and possession limits specified in § 622.277(a)(1)(ii) and

(a) (2) (ii) may not be sold or purchased.

[FR Doc. 2015-25487 Filed: 10/6/2015 08:45 am; Publication  
Date: 10/7/2015]